IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1160 of 1994
With
CRIMINAL APPEAL No. 1167 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT. MEENABEN.M.DAVE - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR EKANT AHUJA, MR. SAURIN A SHAH for Appellant(s) : 1, 1.2.1,1.2.2
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 19/10/2007

ORAL JUDGMENT

1.0 These appeals are preferred by original accused No.1 and original accused No.2

challenging the judgment and order of the learned Special Judge, Ahmedabad dated 3rd October, 1994 passed in Special Case No.5 of 1993.

1.1 The trial Court, vide impugned order, convicted accused No.1, for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced him(accused No.1) to undergo Simple Imprisonment for a period of three years and to pay fine of Rs.2000/- and in case of default to undergo further Simple Imprisonment for a period of three months. Accused No.1 was also convicted by trial Court for the offence punishable under Section 13(1)(d)(i) and (ii) of Section 13(2)of the Prevention of Corruption Act and was sentenced to undergo Simple Imprisonment for a period of three years and to pay fine of Rs.2000/- and in case of default to undergo further Simple Imprisonment for a period of three months. The aforesaid sentences were ordered to run concurrently. The trial Court also convicted co-accused i.e. original accused No.2 for the offence punishable under Section 12 read with

Section 7 of the Act and sentenced him(accused No.2) to undergo Simple Imprisonment for a period of three years and to pay fine of Rs.2000/- and in case of default to undergo further Simple Imprisonment for a period of three months.

1.2 During the pendency of these appeals both original accused No.1 and original accused No.2 have passed away, and hence, by order of this Court their legal heirs were brought on record and were permitted to continue the proceedings.

2.0 The brief facts of the case are that the original complainant-P.W.-1, herein, at the relevant point of time, was working as Circle Inspector in the Revenue Department (Collectorate) at Ahmedabad. Accused No.1 and accused No.2 were also working in the same office in their capacity as Mamlatdar and Dy. Mamlatdar, respectively. As a part of his duty, P.W.-1 had to frequently visit various villages under his jurisdiction i.e., villages of Dehgam Taluka for supervising the maintenance of the Record of

Rights by the concerned officials i.e. 'Talati'. For reimbursement of expenses incurred during such tours, P.W.-1 had to maintain a monthly diary of expenses which had to be produced before Sr. Officer i.e. Mamlatdar for approval and in turn Mamlatdar had to send the said diary to Accounts Department for payment.

2.1 In the year 1991, P.W.-1 sent two diaries for the months of February and March to accused No.1 for approval of reimbursement of the expenses incurred by him(P.W.-1) during the course of his official visits to various villages. In connection with the above said subject, P.W.-1 met accused No.1 on 06.04.1991 as well as on 08.04.1991 and on both the occasions, accused No.1 told P.W.-1 that unless P.W.-1 pay an amount of Rs.50/- for each month i.e. Rs.100/- for two months, he(accused No.1) would not approve the diary of P.W.-1.

2.2 As P.W.-1 was not willing to pay bribe amount, he approached the A.C.B., Office at

Ahmedabad on 11.04.1991 and lodged a complaint under the Prevention of Corruption Act, 1988 against accused No.1. After the recording of the complaint of P.W.-1, Mr. Maurya-P.W.-3, herein, summoned panchas. On arrival of panchas, P.W.-1 and the panchas were introduced to one another. In pursuance of that P.W.-1 narrated the facts of the complaint in brief and the complaint given by P.W.-1 was read over to the panchas and then panchas signed it. P.W.-1, thereafter, produced one currency note of Rs.100/-. The number of the said currency note of Rs.100/- was noted down. Thereupon, all the statutory procedures required for carrying out a raid i.e. experiment of ultraviolet light and normal light with anthracene powder etc., were completed and a preliminary 'Panchnama' was drawn to the aforesaid effect. P.W.-3 gave instructions to P.W.-2-panch witness to remain with P.W.-1 and to witness the transaction that may take place between P.W.-1 and accused No.1, and then, the raiding party left for the office of the Collector.

2.3 On reaching the office of the Collector, as per the arrangement, everybody took their position. P.W.-1 and P.W.-2 went towards the office of accused No.1. P.W.-1 told P.W.-2 to take shelter behind the open window of the office of accused No.1 and stand there so that he (P.W.-2) can properly witness the transaction between him(P.W.-1) and accused No.1, without being noticed. After entering into the Office of accused No.1, P.W.-1 started conversation about approval of his T.A. Bill diaries. At that time accused No.2 was also present there and he(accused No.2) told accused No.1 that P.W.-1 is ready to do the needful and, hence, solve his problem. Accused No.1, repeated the demand of bribe. P.W.-1, therefore, produced the amount of bribe to give it to accused No.1. However, accused No.1 told P.W.-1 to give the said amount to accused No.2. Thereupon, accused No.2 gave signal to P.W.-1 to put the said amount in the spectacles' case of accused No.1. P.W.-1, hence, put the amount of bribe in spectacles' case of

accused No.1. In pursuance of that accused No.1 took out the note of Rs.100/- examined it and then again put it back in the spectacles' case. P.W.-1, thereupon, came out of the office of accused No.1 and as per pre-arrangement gave signal to the raiding party. Hence, the members of the raiding party immediately rushed into the office of accused No.1. However, in the meantime, original accused No.2 had already left the office of accused No.1. P.W.-3, then, gave his introduction to accused No.1. Thereafter, necessary statutory procedures i.e. experiment of ultraviolet light and normal light with anthracene powder, preparation of seizure memo etc., were completed and trap Panachnama was drawn to the aforesaid effect.

2.4 Thereupon, investigation was carried out by the officials of the A.C.B., Ahmedabad in which original accused No.2 was also found to be involved as abettor, in the offence in question. Thereafter, offence was registered against both accused No.1 and accused No.2 under the

Prevention of Corruption Act, 1988. After obtaining sanction, charge-sheet was submitted against both the accused persons before the trial Court. The trial Court framed, read over and explained charges under Section 7 and Section 13(1)(d)(i), and (ii) and Section 13(2)of the Prevention of Corruption Act to accused No.1 and charges under Section 12 read with Section 7 of the Act to the original accused No.2. However, the accused persons did not plead guilty to the charges and claimed to be tried. The prosecution, in support of its case, examined four witnesses i.e., Original Complainant – Mr. Harshadkumar Narmadashankar Upadhayay- P.W.-1(Exhibit-18), Mr. Gunvantbhai Sendhabhai Valand-P.W.-2 (Exhibit-21), Mr. Sitaram Vishwanath Maurya, I.O.,-P.W.-3 (Exhibit-24) and Mr. Bhanvarsingh Madansingh Puwar-P.W.-4(Exhibit-26). The prosecution also relied on several documentary evidences i.e., the Complaint (Exhibit-19), Panchnama(Exhibit-22) and Seizure Memo (Exhibit-23)to support its case. Then, the trial Court heard all the parties and convicted and sentenced both the accused persons

as stated in Para-1.1 of the judgment. Hence, the present appeal.

3.0 Heard, learned Advocate on behalf of the heirs of accused No.1 as well as on behalf of heirs of accused No.2 and Mr. Pujari, learned APP on behalf of respondent-State.

4.0 Learned Advocate for the appellants has submitted that the trial Court ought to have held that non examination of the material witnesses by the prosecution is fatal to the case of the prosecution.

4.1 Learned Advocate has submitted that the trial Court has committed an error in not appreciating the fact that P.W.-1 had personal grudge against accused persons, since accused No.1 had issued memo/s to the complainant, and hence, P.W.-1 filed the complaint in question against the accused persons.

4.2 Learned Advocate has further submitted

that the trial Court ought to have held that the evidence of panch witness i.e P.W.-2 cannot be said to be trustworthy since the said witness exaggerated the version of offence and for the first time before the trial Court he stated that on the day of alleged offence accused No.1 had abused P.W.-1 using filthy language. P.W.-2 had, earlier, not mentioned the said fact either in Panchnama or before the P.W.-3, at the relevant point of time.

4.3 Learned Advocate has submitted that the trial Court has failed to take into consideration the fact that if accused No.1 had earlier demanded an amount of Rs.100/- from P.W.-1 on 06.04.1991 as well as on 08.04.1991 as is claimed by the prosecution, then on 11.04.1991, when P.W.-1 offered the bribe amount to accused No.1, accused No.1, instead of accepting the same, would not have told P.W.-1 to give the said amount to original accused No.2.

4.4 Learned Advocate has submitted that

P.W.-1 in his evidence has stated that he had put only one note of Rs.100/- in the spectacles' case of accused No.1, as demanded by accused No.1, in the presence of accused No.1 and accused No.2 is believed to be true then as per the deposition of P.W.-1, accused No.1 took out the said amount from spectacles' case examined it and then put it back, cannot be believed.

4.5 Learned Advocate has further submitted that the trial Court ought to have appreciated the fact that, though, Panch No.-1 i.e. P.W.-2 was specifically instructed by P.W.-3 to accompany P.W.-1 throughout the raid, P.W.-1 at the last moment told P.W.-2 to stand outside the room where the alleged offence took place, and hence, the evidence of P.W.-2 cannot be accepted in its entirety.

5.0 Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case the documents placed on

record i.e. Complaint (Exhibit-19), Panchnama(Exhibit-22) and Seizure Memo (Exhibit-23) as well as the oral evidence of P.W.-1 (Exhibit-18), P.W.-2 (Exhibit-21) and P.W.-3 (Exhibit-24) the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

6.0 The prosecution, in support of its case, has examined four witnesses i.e., Original Complainant – Mr. Harshadkumar Narmadashankar Upadhayay- P.W.-1(Exhibit-18), Mr. Gunvantbhai Sendhabhai Valand-P.W.-2 (Exhibit-21), Mr. Sitaram Vishwanath Maurya, I.O.,-P.W.-3 (Exhibit-24) and Mr. Bhanvarsingh Madansingh Puwar-P.W.-4(Exhibit-26). The prosecution has also placed reliance on several documentary evidences i.e., the Complaint (Exhibit-19), Panchnama(Exhibit-22) and Seizure Memo (Exhibit-23)to support its case.

7.0 In the light of these submissions, here, it would be relevant to refer to deposition of original complainant i.e., P.W.-1.

7.1 P.W.-1 in his deposition has stated that at the relevant point of time he was working as Circle Inspector in the Revenue Department (Collectorate) at Ahmedabad. As a part of his duty, he (P.W.-1) had to frequently visit various villages of area under his jurisdiction i.e., Dehgam Taluka for supervising the maintenance of the Record of Rights by concerned 'Talatis'. For reimbursement of expenses incurred during such tours, he (P.W.-1) had to maintain a monthly diary of expenses which had to be produced before Mamlatdar for approval and Mamlatdar in turn had to send the said diary to Accounts Department for payment. In the year 1991, P.W.-1 send two diaries to accused No.1 for the month of February and March for reimbursement of traveling allowances. In connection with the reimbursement of expenses, P.W.-1 had also met accused No.1 on 06.04.1991 and on 08.04.1991 and on both the occasions, accused No.1 had told P.W.-1 that unless he(P.W.-1) pay an amount of Rs.100/-, at the rate of Rs.50/- for each month to him(accused

No.1), he would not approve T.A. Bill diaries of P.W.-1. Being aggrieved with the same, on 11.04.1991 P.W.-1 went to Office of the A.C.B., Ahmedabad with a view to file a complaint against accused No.1.

7.2 After recording of complaint of P.W.-1 on 11.04.1991, P.W.-3 summoned panchas. On arrival of panchas, P.W.-1 and panchas were introduced to one another. In pursuance of that P.W.-1 narrated the facts of the complaint in brief and the complaint given by P.W.-1 was read over to the panchas and then panchas signed it. P.W.-1, thereafter, produced one currency note of Rs.100/-. The number of the said currency note of Rs.100/- was noted down and then the said note was given to one Mr. Shukal, Police Constable for experiment of ultraviolet light and normal light with anthracene powder.

7.3 The said police constable, thereafter, smeared the aforesaid currency note of Rs.100/- with anthracene powder and then lightly cleaned

it with a cloth and exposed it to normal light as well as viewed under ultra violet light. When the said currency note was exposed to the normal light nothing significant appeared, but, when the same was viewed under the ultra violet light, dots of white-blue colour appeared thereon. Thereupon, the said Police Constable, put the currency note of Rs.100/- in the shirt pocket of P.W.-1. P.W.-1 was instructed not to touch the said currency note until the same was demanded by accused No.1. The aforesaid paper and cloth were, thereafter, burnt in the presence of the panchas and the bottle of anthracene was kept back in the cupboard. Thereupon, the aforesaid procedures were noted down in preliminary 'Panchnama'. Thereupon, the panchas and the members of the raiding party were given necessary instructions by P.W.-3. P.W.-2 was instructed by P.W.-3 to accompany P.W.-1 and to witness the transaction that may take place between P.W.-1 and the appellant. Thereupon, P.W.-1, panchas and the raiding party left for the office of accused No.1.

7.4 On reaching the office of accused No.1, as per the arrangement, everybody took their position. Then, P.W.-1 along with P.W.-2 went towards office of accused No.1. With a view to avoid any suspicion, P.W.-1 told P.W.-2 to take shelter behind the open window of the office of accused No.1 which was just two feet away from the table of accused No.1 so that P.W.-2 could properly witness the transaction between P.W.-1 and accused No.1, without being noticed. Then P.W.-1 entered into the office of accused No.1, at that time accused No.2 was also present there. P.W.-1, thereupon, started conversation about sanctioning of his T.A. Bill diaries with accused No.1. Accused No.1, hence, called one Mr. Dantani. Mr. Dantani came with the file of P.W-1, gave it to accused No.1 and left the room. Accused No.1, thereupon, asked P.W.-1 as to what should be done? P.W.-1, therefore, again requested accused No.1 to approve his T.A. Bill diaries. Accused No.1, then, asked accused No.2 as to what should be done, in reply to that

accused No.2 told accused No.1 that P.W.-1 has no objection and he(P.W.-1) is ready to do needful, and hence, solve his problem. Thereafter, accused No.1 and accused No.2 discussed the issue of bribe amount between them. Thereafter, accused No.1 told P.W.-1 that before he (accused No.1) approves T.A. Bill diaries of P.W.-1, P.W.-1 has to fulfill the custom and then told P.W.-1 to give bribe money to accused No.2. P.W.-1, hence, produced currency note of Rs.100/- treated with anthracene powder to give it to accused No.2. However, accused No.2 gave signal to P.W.-1 to put the amount of bribe in spectacles' case of accused No.1. Hence, P.W.-1 put the amount of bribe in the spectacles' case of accused No.1. Thereafter, accused No.1 signed the T.A. Bill diaries of P.W.-1 and took out currency note of Rs.100/- from his spectacles' case, examined it and again put it back where it was. Then, as per the arrangement, P.W.-1 gave signal to the raiding party and members of the raiding party rushed into the office of accused No.1. However, in the meantime, accused No.2 had already left

the office of accused No.1.

7.5 After entering into the office of accused No.1, P.W.-3 gave his introduction to accused No.1. P.W.-2 then informed P.W.-3 that the amount of bribe was in spectacles' case of accused No.1. Mr. Shukal, Police Constable, then, examined the hands of panchas and members of the raiding party in normal light as well as in ultraviolet light, but, nothing significant appeared. When the similar experiment was carried out on the hands of accused No.1, the presence of anthracene powder was found on the hands and finger tips of accused No.1. Thereafter, on instructions of P.W.-3, P.W.-2 took out currency note of Rs.100/- from the spectacles' case of accused No.1 and when its number was tallied with the number mentioned in the first part of Panchnama, it was found to be matching. Thereupon, when the aforesaid experiment of normal light and ultraviolet light was carried out on the hands of P.W.-2, spectacles' case of accused No.1 and the piece of cloth seized from the said spectacles'

case as well as on the hands and shirt worn by P.W.-1, the presence of anthracene powder was found on all of them. P.W.-1, then, identified his T.A. Bill diaries. P.W.-3, thereafter, took signature of P.W.-1 in the carbon copies of the said diaries and seized it. Then, the 'Muddamal' recovered from accused No.1 was attached and a Panchnama was drawn to the aforesaid effect.

7.6 At the time of his cross-examination, P.W.-1 stuck to the version given by him in his deposition and the defence failed to bring out anything which could help the appellants.

7.7 The version of offence given by P.W.-1 that accused No.1 demanded and accepted an amount of Rs.100/- from him (P.W.-1) with the assistance of accused No.2, for approving his (P.W.-1's) T.A. Bill diaries is also supported by evidence of one Gunvantbhai Sendhabhai Valand–Original Panch No.1-P.W.-2, herein, as well as one Sitaram Vishwanath Maurya, Investigating Officer, P.W.-3. P.W.-2 and P.W.-3 have strongly supported the

case of prosecution of demand and acceptance of bribe by accused No.1 from P.W.-1 with the assistance of accused No.2. The conduct of accused No.1 of asking accused No.2 as to what should be done in regard to the T.A. Bill diaries of P.W.-1 and subsequent discussion between accused No.1 and accused No.2 with regard to bribe amount in the presence of P.W.-1 and P.W.-2-who was standing behind the open window of the Office of the accused No.1 as well as the utterance of words by accused No.2 to accused No.1 that P.W.-1 is ready to do the needful and hence solve his(P.W.-'2) problem, the conduct of accused No.1 of telling P.W.-1 to give the amount of bribe to accused No.2 after signing the T.A. Bill diaries of P.W.-1 as well as the further conduct of accused No.2 of giving signal to P.W.-1 to put the amount of bribe in the spectacles' case of accused No.1, strongly support the case of the prosecution that the accused No.1 had demanded and accepted bribe from P.W.-1 and that accused No.2 had assisted accused No.1 in extorting money from P.W.-1 by pressurizing

him(P.W.-1). Even, otherwise, in view of the absence of any satisfactory explanation on the part of accused No.1 as to how he came into possession of bribe money to rebut the case put forward by the prosecution, strongly suggests that accused No.1 pressurized P.W.-1 with the assistance of accused No.2 to make him(P.W.-1)pay bribe money. The evidence of P.W.-3 and P.W.2-who are independent witnesses, are natural and trustworthy, and hence, the trial Court has rightly relied on the same.

7.8 Apart from that the case of the prosecution is also supported by the documentary evidence i.e., complaint(Exhibit-19), Panchnama (Exhibit-22) and Seizure Memo (Exhibit-23). From the above said documentary evidence, the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the prosecution.

8.0 Since the evidence discussed hereinabove are found to be sufficient in deciding the

Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

9.0 So far as the contention raised by the learned Advocates for the appellants regarding non-examination of certain witnesses mentioned in the charge-sheet by the prosecution is concerned, in the present case, the prosecution in support of its case has examined four witnesses i.e. original complainant-P.W.-1 (Exhibit-18), P.W.-2(Exhibit-21), P.W.-3(Exhibit-24) and P.W.-4(Exhibit-26) and has also placed reliance on several documentary evidences i.e. Complaint (Exhibit-19), Seizure Memo (Exhibit-23) and the Panchnama (Exhibit-22). The evidence of P.W.-1, P.W.-3 and P.W.-2-who is an independent witness strongly supports the case of the prosecution of 'demand', 'offer' and 'acceptance' of bribe by accused No.1 with the assistance of accused No.2. The evidence of said witnesses are sufficient to prove the guilt of the accused persons, and hence, non-examination of some of the witnesses,

mentioned in the charge-sheet, by the prosecution will not absolve the accused persons from the liability of criminal prosecution. Hence, the said contention is rejected.

9.1 So far as the contention raised by the learned Advocate for the appellants that since P.W.-1 had grudge against the accused persons, he (P.W.-1) filed a false complaint is concerned, it may be noted that P.W.-1 was transferred to the Ahmedabad office just about two months prior to the alleged incident, and hence, in such a short span of time, it is hard to believe that P.W.-1 would dare to file a complaint against two senior officers with whom he had to work during his entire tenure, without any basis. Even if, it is believed that P.W.-1 had any grudge against the accused persons, as is claimed by the defence, then in that case P.W.-1 would have filed the complaint against both the accused persons i.e. accused No.1 and original accused No.2. But, from the record it clearly transpires that P.W.-1 had filed complaint against original accused No.1

only and that the accused No.2 came into the picture as an abettor, only during the investigation which was carried out by the investigating agency. Apart from that the defence has failed to produce any memo/s issued against P.W.-1, to support their theory of grudge. The said fact clearly suggests that the complaint filed by P.W.-1 is genuine, and hence, the said contention is also rejected.

9.2 So far as the contention raised by the learned Advocate for the appellants that P.W.-2 cannot be said to be an independent witness since he had tried to exaggerate the offence by stating something for the first time before the trial Court is concerned, it would be relevant to refer to a decision of this Court in the case of ***"State of Gujarat Vs. Maganbhai Jethabhai Vaghela & Anr."*** reported in 1982(1)GLR 596 wherein this Court at Para-12 has held as under,

> **"12.** The panch is not a trap witness at all. He is not interested in the success of the raid. The members of the raiding party only could be interested in the

> success of the trap. The complainant could be considered to be a person who is an accomplice and, therefore, his testimony may not be accepted without corroboration. There is no law which requires that an independent and reliable panch also should be corroborated before his evidence is required to be accepted."

9.3 Here, it is not in dispute that P.W.-2, for the first time in his cross-examination before the trial Court, had stated that on the day of alleged incident, while demanding bribe money, accused No.1 was abusing P.W.-1, at the top of his voice, using filthy language which cannot be uttered in the Court. P.W.-2 had also stated that he had not mentioned the said fact earlier at any point of time. However, on the said ground only, the entire evidence of P.W.-2 cannot be thrown away. On the contrary, whatever little assistance, the evidence of P.W.-2 could provide is taken, as observed by the Hon'ble Apex Court in a number of decisions that in a case where evidence of a witness does not inspire confidence fully, then in that case instead of discarding the entire evidence of such witness, whatever assistance, evidence of such witness

could provide should be taken. Keeping this principle in mind if we evaluate the evidence of P.W.-2 in its entirety, it strongly support the case of the prosecution of 'demand' and 'acceptance' of bribe by accused No.1 with the assistance of P.W.-2 and he (P.W.-2)clung to the same in his deposition as well as in his cross-examination and the defence failed to controvert the same. Hence, the said contention is rejected.

9.4 So far as the contentions raised by the learned Advocate for the appellant that if accused No.1 had demanded bribe from P.W.-1 earlier on two occasions, as is claimed by the prosecution, then, on the day of alleged incident when P.W.-1 offered the amount of bribe, accused No.1 would not have told P.W.-1 to give the said amount to accused No.2 and apart from that accused No.1 would not have taken out the said note from his spectacles' case, counted it and put it back is concerned, the said contention also requires to be rejected since both P.W.-1 and P.W.-2 in their depositions as well as in

their cross-examinations have clearly stated that when P.W.-1 offered the amount of bribe to accused No.1, accused No.1 told P.W.-1 to give the said amount to accused No.2 and accused No.2 in turn gave signal to P.W.-1 to put the said amount in spectacles' case of P.W.-1 and after the P.W.-1 put the amount of bribe in spectacles' case of accused No.1, accused No.1 took out the said amount to examine as to whether the amount as demanded by him had been paid by P.W.-1 or not and after examining the same, put it back in the said cover. Even, recovery of the amount of bribe from the spectacles' case of accused No.1 at the instance of P.W.-2, the presence of anthracene powder on the spectacles' case and on the cloth recovered from the said spectacles' case of accused No.1 as well as on the hands and finger tips of accused No.1 clearly suggests that accused No.1 had, in fact, demanded and accepted the bribe money and counted the same and put them back in his spectacles' case. Hence, the said contention is rejected.

9.5 So far as the contention raised by the learned Advocate for the appellants that P.W.-1 intentionally told P.W.-2 to stand behind open window of the office of accused No.1 where the alleged offence took place is concerned, it is not in dispute that at the time of alleged offence, P.W.-2 was standing behind open window of the office of accused No.1 and was not present in the office of accused No.1 as per the instructions of P.W.-3. P.W.-2 in his deposition has stated that since, at the relevant point of time, there was only one extra chair in the office of accused No.1, with a view to avoid any suspicion, P.W.-1 had told him(P.W.-2) to stand behind the said open window. From the record it also transpires that the table of accused No.1 was just about two feet away from the window of his(accused No.1) office which was open, and therefore, it was much easier for P.W.-2 to witness the transaction between P.W.-1 and accused No.1 from behind the said open window, without being noticed or without raising any suspicion. It appears that, therefore, P.W.-1

told P.W.-2 to stand behind the said open window instead of taking P.W.-2 with him(P.W.-1) in the office. Moreover, though, P.W.-2 was not present along with P.W.-1 in the office of accused No.1 and was standing behind the open window of the office of accused No.1, he (P.W.-1) has strongly supported the case of the prosecution of 'demand' and 'acceptance' of bribe by accused No.1 with the assistance of accused No.2, in his deposition as well as in his cross-examination. Even, the recovery of bribe amount of Rs.100/- from the spectacles' case of accused No.1, at the instance of P.W.-2, clearly suggests that P.W.-2 had witnessed the entire transaction between P.W.-1 and accused No.1. Apart from that, P.W.-2 is also a public servant just like the accused persons, and hence, there is no reason to believe that P.W.-2 would try to implicate the accused persons in the offence in question falsely. Even otherwise, it is not the case of the defence that at the relevant point of time the window of the office of accused No.1 was not open or that P.W.-2 had any personal enmity / grudge against the

accused persons, on account of which he(P.W.-2) had deposed against the accused persons. Hence, the said contention is also rejected.

No further contention has been raised by the learned Advocate for the appellant.

10.0 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the amount of Rs.100/- received by accused No.1 from P.W.-1 on 11.04.1991 with the aid of accused No.2 was illegal gratification and that the ingredients of bribe i.e. demand, offer and acceptance has been successfully proved by the prosecution beyond doubt.

11.0 In the result, both the appeals stand dismissed. The judgment and order of the learned Special Judge, Ahmedabad dated 3rd October, 1994 passed in Special Case No.5 of 1993 stands confirmed.

(M.D. Shah,J.)

Umesh/